

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REPUBLIC OF BENIN,

Plaintiff,

- against -

BEVERLY MEZEI, ET AL.,

Defendants.

JOHN G. KOELTL, District Judge:

The Court has reviewed the Order of Magistrate Judge Dolinger dated November 16, 2010, and the objections filed by the plaintiff.

The objections are overruled. There is nothing in the Order that is clearly erroneous or contrary to law. Indeed, on a de novo basis, the Court would adopt the Order.

Shimoff has the right to seek restitution for the amounts that Benin received for the invalid transfer of the property to Shimoff as a reasonable condition of the cancellation of the purported sale and the return of the property, whether that reasonable condition is imposed under state or federal law. Indeed, as Shimoff points out, it would be unfair and inequitable for Benin to obtain equitable relief in the form of recovering the property without restoring the benefits it may have received in connection with the transaction involving the property.

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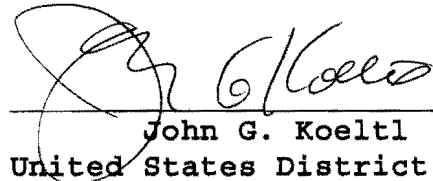
MEMORANDUM OPINION AND
ORDER

Moreover, the Court would also exercise its discretion, if it were necessary, to allow Shimoff to plead a counterclaim for restitution against Benin, which claim is deemed denied by Benin. For all of the reasons explained by the Magistrate Judge, that issue has plainly been in the case, and Benin is not prejudiced by Shimoff's assertion of that claim at this time.

The objections are therefore overruled and the Court adopts the Order.

SO ORDERED.

Dated: New York, New York
February 14, 2011



John G. Koeltl
United States District Judge